

BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT KARACHI  
DOUBLE BENCH-I

APPEAL NO. AT-12/2021

M/s UBL Funds Managers Limited (SNTN: 1456150-6),  
08<sup>th</sup> Floor, Executive Tower, Dolmen City,  
Block-4, Clifton, Karachi.....Appellant

Versus

Assistant Commissioner, (Unit-11),  
Sindh Revenue Board,  
2<sup>nd</sup> Floor, Shaheen Complex,  
M.R. Kiyani Road, Karachi.....Respondent

Date of filing of Appeal: 16.02.2021

Date of hearing: 15.03.2022

Date of Order: 27.04.2022

Mr. Anwar Kashif Mumtaz, advocate for appellant  
Mr. Irfan Ahmed Sohu, AC-(Unit-11), SRB for respondent



ORDER

Justice <sup>®</sup> Nadeem Azhar Siddiqi: This appeal has been filed by the appellant challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 06/2021 dated 14.01.2021 passed by the Commissioner (Appeals) in Appeal No. 383/2019 filed by the appellant against the Order-in-Original (hereinafter referred to as the OIO) No. 700/2019 dated 04.10.2019 passed by the Mr. Zohaib Athar, Assistant Commissioner, (Unit-11) SRB Karachi.

*M. A. S.*

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02. It was stated in the OIO that the appellant was registered with Sindh Revenue Board (SRB) under the services category "Management Services Including Fund And Assets Management" classified under The Tariff Heading 9825.0000 of Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act) chargeable to Sindh Sales Tax (SST) @ 14% and 13% during the tax periods January-2016 to June-2016 and July- 2016 to December-2016 respectively under section 3, 8 and 9 of the Act, 2011.

03. It was further stated in the OIO that the Audit Wing of SRB through the Deputy Commissioner, Audit (hereinafter referred as, DC, Audit) selected the appellant for audit under section 28 of the Act. The audit was conducted by the audit team and such report was submitted to the Assistant Commissioner (AC). The observations contained in the audit report were communicated to the appellant and its response was received and duly considered by the audit team. The following material points of fact and law, constituting tax evasion/loss of legitimate government revenue finally emerged from the audit report.

I. Inadmissible input tax adjustments for the tax period from January, 2016 to December 2016:

a) The Annexure A of SST returns was scrutinized and it transpired that the appellant had received various taxable services, which were not directly attributable to the services rendered i.e. gifts, give away, construction, office equipment etc. The input tax claimed/adjusted on the same were liable to be recovered along with default surcharge under section 44 and penalty u/s 43 of the Act.

b) It was revealed on scrutiny of 'Annexure-A' of SST returns that the appellant had claimed/adjusted inadmissible input tax of Rs.824,129/- from suppliers who were un-registered and suspended in FBR. Hence, section 15A (1) (b) and 15A (1) (e) of the Act were contravened.

II. Non-payment of Withheld Sindh Sales Tax on Rent:


a) Whereas, it is evident from financial statements that the registered person had paid rent of Rs.41,761,000/- under heading

“Premises rent” which was taxable under section 2(72B) and (72C) of the Act.

- b) The aforesaid definition provided under section 2(72C) was further elucidated through Sindh Sales Tax on Services (Amendment) Act, dated 8<sup>th</sup> March 2016. This amendment Act also validated the applicability of the provisions of renting of immovable property through insertion of Section 84 to the Act giving retrospective effect to such amendment. The same is reproduced for ready reference as under:

“...Notwithstanding anything contained in this Act or any law for the time being in force, or any judgment, decree or order of any court, the notification issued by the Board and the notices issued or order passed by the officers of SRB for registration of taxpayer or for levy, collection, withholding payment or recovery of tax on renting of immovable property services shall be deemed to have validity issued or passed under this Act”.

- c) The registered person being recipient of renting of immovable property services was liable to withhold 100% of Sindh Sales Tax under section 13 read with sub-rule (5) of rule 3 of Sindh Sales Tax Special Procedure (Withholding) Rules, 2014. Therefore the amount of Rs.2,923,270/- was liable to be recovered along with default surcharge u/s 44 of the Act, 2011. Such details are reproduced as under:-



Description	Amount in Rs.
Total Rent as per Financial Statement	41,761,000
Sindh Sales Tax from Jan-Jun 2016 (6%)	1,252,830
Sindh Sales Tax from Jul-Dec 2016 (8%)	1,670,440
Net Withheld SST Rent	2,923,270

III. Short Declaration of Revenue (Financial Statements):

- a) Under Note 20 and 21 of Financial Statements for the period ending December, 2016, registered person had declared revenue amounting to Rs.920,983,000/- under the head remuneration from fund under management, investment advisory fees and sales load taxable under Tariff Heading 9825.000 and 9813.8100 of the Second Schedule to the Act while the revenue declared with SRB amounted to Rs.901,026,479/-, thus resulting in short payment of

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Rs.19,956,521/-. The registered person had failed to provide any plausible explanation regarding said observation. Hence Sindh sales tax of Rs.2,694,130/- was liable to be recovered along with default surcharge under section 44 and penalty under section 43 of the Act. Details of such addition are as under:

Description	Amount in Rs.
Revenue:	
Remuneration from the funds under management	785,965,000
Sales Load from funds under management	135,018,000
Total Revenue as per F. statements	920,983,000
Declared in Sindh Sales Tax Returns	901,026,479
Short declared Sales	19,956,521
Sindh Sales Tax from Jan-Jun 2016 (14%)	1,396,956
Sindh Sales Tax from Jul-Dec 2016 (13%)	1,297,174
Net S. Tax Liability	2,694,130



04. The appellant was served with Show-Cause Notice (SCN) dated 11.05.2019 to explain as to why SST of Rs.8,245,694/=for the tax periods from January-2016 to Decamber-2016 may not be assessed and recovered under section 2 (1) of the act alongwith default surcharge under section 44 of the Act. The appellant was further called upon to explain as to why penalties should not be imposed under section 43 of the Act (without specifying the relevant penalties).

05. The appellant filed details and written reply dated 24.05.2019 refuting the allegation leveled in the SCN. It was stated that the input tax was rightly claimed and the chargeability of SST on renting of property was declared unconstitutional by the High Court of Sindh and there was no short declaration of revenue as alleged in the SCN.

06. The Assessing Officer (AO) assessed the SST of Rs.2,306,904/- alongwith inadmissible input tax of Rs.2,923,270/- on renting of immovable property and 2,694,130/- on account of short paid SST and ordered recovery of such total assessed amount of Rs.7,924,307/- under section

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23(1) of the Act along with default surcharge (to be calculated at the time of payment) under section 44 of the Act. The AO also imposed penalty of Rs.396,215/- (being 5% of the total amount payable i.e. Rs.7,924,307/-) as provided at Serial No. 3 of the Table under section 43 of the Act for non-payment of sales tax.

07. The appellant challenged the said OIO before Commissioner (Appeals) by way of filing appeal under section 57 of the Act. The Commissioner (Appeals), SRB while maintaining the OIO reduced the SST to Rs.7,447,970/- alongwith default surcharge under section 44 of the Act. Moreover the penalty of Rs.396,215/- under Serial No. 3 of the Table under section 43 of the Act was also reduced to Rs.50,000/-.

Resultantly an appeal was filed by the appellant before this Tribunal.

08. The learned representative of the appellant submitted as under:-



i. The input tax claimed by the appellant was erroneously disallowed without considering that the same was used in providing taxable services.

The amendment in the Act relating to taxing the renting of Immovable Property Services was struck down by Sindh High Court in the case of M/s Young's (Pvt.) Ltd and thereafter the clause (b) was inserted under sub-section (1) of section 4 of the Act on 4<sup>th</sup> April, 2018 with retrospective effect from 1<sup>st</sup> July, 2015 and section 84 being a validation clause was also inserted in the Act on 26.11.2015.

- iii. The claim of SST with retrospective effect was in violation of the case of M/s Young (Pvt.) Ltd. and was not permissible as per law.
- iv. The appellant being a withholding agent could not go back to recover and deposit the SST on renting of immovable property
- v. The short declared tax was subsequently deposited on accrual basis.

09. The learned AC-SRB submitted as under:-

- i. The forums below have competently passed the OIO and OIA and the same do not suffer from any infirmity as alleged.

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- ii. The SST was assessed on the basis of audit conducted by the department.
- iii. The input tax claimed by the appellant was not directly used in providing or rendering taxable services, and was thus rightly disallowed under the provision of section 15A of the Act.
- iv. The renting of immovable property was rightly taxed with retrospective effect in consonance with the law.
- v. The appellant had booked the expenses on account of SST on renting of immovable property but had not paid the amount to SRB.
- vi. The appellant has not produced CPR to substantiate its claim that the short declared tax was subsequently deposited on accrual basis.

10. The AC submitted Reconciliation Report dated 17.01.2022 and the position emerged as under:-

Inadmissible Input tax adjustments SST Unpaid on Rent	1,830,570
SST Unpaid on Rent	2,434,411
Subtotal	4,264,981
Penalty Upheld vide OIA No.6/2021	50,000
Total Payable	4,314,981

11. We have heard the learned representative of the parties, perused the record made available before us and the written submissions filed by them.

12. In the instant matter SCN was issued confronting SST of Rs.8,245,964/-, the OIO was passed and SST of Rs.7,924,307/- was determined. Such SST was reduced in first appeal to Rs.7,447,970/-. However, on Final Reconciliation Report submitted by the AC on 17.01.2022 the SST was worked out to Rs.4,314,981/-. The SST was payable on account of disallowance of input tax and SST on renting of immovable property.

13. The input tax was disallowed under the following heads:-

- a. Food, Beverages, uniforms  
Souvenirs and tinted film for  
Car windows. Rs.248,267/-

*M. S.*

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- b. supplier not registered with FBR. Rs.1,300,349/-  
c. Non production of record. Rs.280,283/-

Each of the above heads are discussed separately as under:-

a) Food, Beverages, uniforms, souvenirs and Tinted film of car windows.

i. The input tax on food and beverages was specifically prohibited under sub-clause (iv) of clause (g) of sub-section (1) of section 15A of the Act. The appellant could not claim input tax against the provision of law on the pretext that the same was directly used in providing taxable services. Clause (g) of sub-section (1) of section 15A of the Act provides that the goods or services, excluding the ones directly used and consumed in the economic activity of a registered person in provision of the services paying sales tax at a rate not less than thirteen percent advaloram. In this provision the phrase "ones directly used and consumed in the economic activity" means that without which the providing or rendering taxable service was not possible.

ii. The position of souvenirs, uniforms and tinted films for car windows is same as mentioned at sub para (i) above. These items may be necessary to expand the business of the appellant but were not necessary or essential to provide or render taxable services.

iii. In view of the above discussions, we hold that the input tax of Rs.248,267/- was rightly disallowed.

b) Taxable services provided by suppliers, which were not registered with FBR.

i. This is a decided issued by a learned DB of the Honorable High Court of Sindh in the reported case of Shield

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Corporation versus SRB, 2021 PTD 1187 and the relevant para is reproduced for ready reference as under:-

*"...15. The upshot of the discussion made above being that, in our view, the petitioners are entitled to claim input adjustment in respect of the taxable services provided to them by unregistered persons. SRB, therefore, is directed to make necessary amendment /provision in the e-return to enable the persons filing their returns via e-filing to claim the input tax adjustment from unregistered persons also and till such time the petitioners may be allowed to file their returns manually in order to avoid any confusion created in this behalf. All the petitions, therefore, stand allowed along with the listed applications. Let a copy of the judgment be forwarded to the Chairman, SRB, for information and compliance.*



In view of the above decided issue we hold that the appellant was entitled to claim input tax of Rs.1,300,349/- relating to suppliers which were not registered with FBR.

- c. Disallowance of input tax on account of non-production of record for Rs.280,283/-.
  - i. The appellant under section 26 of the Act being service provider of taxable service was required to maintain the record of taxable services provided by it. However under section 27 of the Act the appellant was required to maintain such record for ten years. Since the appellant could not produce the record and invoices for verification the input tax under this head was rightly disallowed.
  - ii. In view of the above discussion we hold that the appellant was not entitled to claim input tax adjustment of Rs.280,283/- and thus was required to deposit the same with SRB.

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14. Charging of SST on the value of immovable property in Sindh valuing Rs.34,777,311/- involving SST of Rs.2,434,412/-.

i) The department has charged SST on the value of renting of immovable property. However it is not disputed that the appellant has acquired the service of renting of immovable property in Sindh valuing to Rs.34,777,311/- involving of SST of Rs.2,434,412/-. The appellant submitted that the SST was charged but not paid due to the Judgment of the High Court of Sindh in the Young's case. The AC submitted that the defect pointed out by the Honorable High Court in the Young's case was cured by substituting clause (b) of sub-section (1) of section 4 of the Act with retrospective effect and a proviso to sub-section (1) of section 84 was also added to validate the collection of SST effective from 01.07.2015. The contention of the appellant was that such amendment was also challenged in the High Court whereas the department challenged the judgment in the Young's case in the Honorable Supreme Court of Pakistan.



ii) The present position is that the defect pointed put by the Honorable High Court was cured and the SST was levied with retrospective effect from 1st July, 2015 which according to the appellant was again challenged before the High Court of Sindh. The SRB also challenged the judgment in the Honorable Supreme Court. The law enacted by the Sindh Legislature is in field with full force and has not been struck down or stayed. The law could be struck down but its operation could not be stayed or interfered and the law is to be allowed to take its own course. The law is to be taken as validly made and operative till it is declared otherwise. In support to this contention reliance is placed on the reported case of Federation of Pakistan versus Aitaz--az Hasan and another wherein it was held as under:-

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"...It is a well settled principle of constitutional interpretation that until a law is finally held to be ultra vires for any reason it should have its normal operation".

In another reported case of Aijaz Ali Khan Jatoi versus Liaqat Ali Khan Jatoi, 1993 SCMR 2350 it was held as under:-

"...6. As regards the interim relief, this Court has already held in Federation of Pakistan v. Aitazaz Ahsan and another PLD 1989 SC 61 that a law is to be taken as validly made and operative till it is declared otherwise. We find that in clear terms a provision has been made in section 12 of the Act as amended, for the deletion of the names of such defaulters from the list of the contesting candidates whose names appear in the statutory list published by the Banking Council. It is not disputed that the names of all the three petitioners appear in such a list and the amount shown due therein is in excess of the prescribed limit of one million rupees".

- iii) The position in the instant case is identical. A provision in the Act has been made levying SST on the service of renting of immovable property and law was at the implementation stage. The amendment was challenged by the tax payers and the findings in the Young's case was challenged by the department in the Supreme Court of Pakistan, but no injunction order was placed before us suspending the operation of law, thus the appellant is required to implement the law and to deposit the SST on the service of renting of immovable property.
- iv) In view of the above discussions we uphold the addition of Rs.2,434,412/- on account of SST on renting of immovable property.

15. The appellant is required to deposit Rs. 248,267/- on account of disallowance of input tax, Rs.280,283/- on account of ~~on account of non-~~

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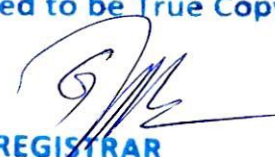
production of record and invoices and Rs.2,434,412/- on account of SST on renting of immovable property, totaling Rs.2,962,972/- with default surcharge (to be calculated at the time of payment) under section 44 of the Act.

16. The AO imposed penalty of Rs.396,215/- under serial No.3 of the Table under section 43 of the Act which was reduced to Rs.50,000/- by Commissioner (Appeals). We maintain the reduced penalty of Rs.50,000/-.

17. In view of the above discussions the appeal is partly allowed. The OIO and OIA are maintained to the extent of para 15 and 16 supra.

18. The appeal is disposed of accordingly. The copy of the order may be supplied to the learned representative of the parties.

  
(Imtiaz Ahmed Barakzai)  
TECHNICAL MEMBER

  
(Justice Nadeem Azhar Siddiqi)  
CHAIRMAN  
Certified to be True Copy  
  
REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD

Karachi:

Dated:27.04.2022

Copy Supplied for compliance:

- 1) The Appellant through Authorized Representative.
- 2) The Assistant Commissioner, (Unit-05), SRB, for compliance

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- 5) Guard File.

Order issued on 28/04/2022

Order Dispatched on 28/04/2022